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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/814,601

Filing Date: March 23, 2001

Appellant(s): LYNN ET AL.

Lawrence T. Cullen
(Reg. No. 44,489)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 June 2008 appealing from the Office action mailed 26 May 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The response after final rejection filed on 26 July 2006 did not include any amendments, and has been entered .

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Slivka et al, US Patent 6049671.

In reference to **Claim 1**, Slivka discloses a method for securely distributing a component including signing a configuration file (the cabinet in the distribution file of column 16, line 55-column 17, line 1) including a load table which defines a plurality of authorized components for a network appliance (the summary of available software of column 8, lines 34-37; see also column 5, lines 55-65; column 6, lines 39-49; column 8, lines 43-56, where the user authorizes downloading some or all of the available software components; see also column 13, lines 37-60 where the cabinet is generated from the authorized and requested software components), executing a secure kernel for checking the authenticity of the configuration file (column 17, lines 58-63) and for establishing communication with a network host (column 6, lines 12-18), verifying the authenticity of the configuration file (column 17, lines 58-63), reading the load table, and loading authorized components defined in the load table onto a network device (column 8, line 65-column 9, line 2; column 18, lines 44-48).

In reference to **Claim 2**, Slivka further discloses that the loaded available software can be an operating system (the database of available software of column 7, lines 49-57, can include operating system components).

In reference to **Claim 3**, Slivka further discloses loading a software application (column 7, lines 49-64; column 8, line 65-column 9, line 2).

In reference to **Claim 4**, Slivka further discloses that the loaded available software can be services (the database of available software of column 7, lines 49-57 can include patches, fixes, and wizards).

In reference to **Claim 5**, Slivka further discloses generating an updated configuration file (column 8, lines 27-33; see also column 5, lines 55-65; column 6, lines 39-49; column 8, lines 43-56; and column 13, lines 37-60, where the list of available software can be updated and new cabinet files can be generated based on the updated list of software authorized for installation by the user), signing the updated configuration file (column 16, lines 65-67), transmitting the signed configuration file (column 8, lines 34-37; column 17, lines 51-57), verifying the authenticity of the updated configuration file (column 17, lines 58-63), and reading the updated configuration file (column 8, lines 34-46; column 8, line 65-column 9, line 7; column 18, lines 44-48).

(10) Response to Argument

A. Claims 1-4

Prior to addressing Appellant's specific arguments, the Examiner submits the following clarifying remarks regarding the rejection of the claims and the interpretation of the applied prior art. The Examiner notes that Appellant's arguments largely depend on how the "load table which defines a plurality of authorized components for said network appliance" (included in the claimed configuration file) is interpreted. However, the Examiner submits that, while the "summary of available software" disclosed by Slivka (column 8, lines 34-37) was considered the most explicit disclosure of a "load table" as claimed, the load table within the disclosed "cabinet file" (corresponding to the claimed

"configuration file") was also considered to be met by Slivka's disclosure of the listing of the software that is actually included within the cabinet file, namely the software authorized by the user and requested for download (see Slivka, column 5, lines 55-65; column 6, lines 39-49; and column 8, lines 6-32, further, especially note column 8, lines 43-56, where the user authorizes downloading of software components; even further, see column 13, lines 37-60, where the cabinet files are created from directive files, which list authorized components, in response to a user request for those user authorized components; see more generally column 13, line 37-column 17, line 50, describing further steps in the generation of the cabinet file from directives and the digital signing thereof). The Examiner further notes that this corresponds substantially with the description of the invention in the present specification, where downloads of components may be requested by an end user (see page 4, lines 7-12 of the present specification). The Examiner additionally again notes the presence of an installation table in the cabinet file (corresponding to the claimed configuration file) which lists files included within the cabinet file (see column 15, lines 45-62, where the installation table lists requirements of the files in the cabinet file; see also column 16, line 55-column 17, line 1). Although Appellant has previously argued that this installation table "merely relates to the mechanics of uploading selected programs into a computer" (page 5 of the response received 19 September 2005), the Examiner notes that, as contemplated by Appellant, the claimed load table also deals with the mechanics of loading software components into a computer (see page 2, lines 27-30 of the present specification, noting that the load table lists the source and order of loading of the components).

Even assuming *arguendo* that the listing of software included in the cabinet file (as described above) did not anticipate the claimed limitation of the load table, the Examiner submits that the above noted installation table could also be considered to meet such a limitation.

Turning now to Appellant's arguments in the present Appeal Brief, after summarizing the present invention (pages 3-4 of the present Appeal Brief) and purporting to provide a summary of the Slivka reference (page 4 of the Appeal Brief), with respect to the rejection of **Claims 1-4** and with specific reference to independent **Claim 1**, Appellant asserts that Slivka does not disclose the claimed invention because the cabinet file, corresponding to the claimed configuration file, does not include a load table which defines a plurality of authorized components for the network appliance (page 5 of the Appeal Brief). In particular, Appellant asserts that "Slivka is not concerned whether or not the network appliance itself is authorized to operate a program" (Appeal Brief, page 5). However, the Examiner notes that the claim does not explicitly recite that the **appliance** itself is authorized to operate a program; rather, the Claim recites that the **components** are authorized for the appliance (and not that the appliance is authorized for the components). Appellant further notes that, in Slivka, "the user is asked to choose which available computer software shown on the summary should be downloaded" (Appeal Brief, page 5, citing Slivka, column 8, lines 34-43). The Examiner submits that this clearly corresponds to the user authorizing the components for the appliance, as previously described.

Further, Appellant asserts that "the cabinet file [corresponding to the claimed configuration file] cannot include the alleged summary of available computer software" and that there is no suggestion to include such summary in the cabinet file (page 5, Appeal Brief). In particular, Appellant argues that the cabinet file is created after the summary of available software is first presented to the user; however, that does not preclude the cabinet including the summary, and further, does not preclude the cabinet from including a list of the software components that were in fact authorized by the user, and the Examiner further submits that Slivka discloses exactly that (see Slivka, column 5, lines 55-65; column 6, lines 39-49; and column 8, lines 6-32; further, especially note column 8, lines 43-56, where the user authorizes downloading of software components; note also column 13, lines 37-60, where the cabinet is created from the directive file which lists the software authorized by the user for download; see also column 16, line 55-column 18, line 15, showing the use of digital signatures to determine if access to the downloaded program is authorized, also noting column 18, lines 35-48, where software is installed only if the digital signature is verified). Appellant further asserts that "it would hardly be desirable or beneficial to encrypt a listing of programs to prevent viewing by the public at large" (Appeal Brief, pages 5-6); however, the Examiner notes that Appellant has not provided any evidence in support of such a disclosure in Slivka. The Examiner further notes that although Slivka does disclose performing a digital signature on the configuration file (see column 16, line 55-column 18, line 15, as above), which does encompass encryption operations, this is not equivalent to encrypting the file to prevent viewing, but rather uses encryption to allow verification of

the integrity of the list and the authorization for use (again, column 16, line 55-column 18, line 15). Appellant additionally asserts that “while Slivka clearly discloses to install the program in the cabinet file on a user’s computer, a listing of programs and updates available for downloading, which is likely to frequently change, clearly would not be beneficial or desirable to have installed on a user’s computer” (Appeal Brief, page 6). However, the Examiner notes that, first, Slivka does not explicitly disclose “installing” the list of available programs, but rather discloses installing the programs themselves (see column 18, lines 44-48), and second, Appellant’s assertion that downloading or “installing” the list would not be beneficial is conjecture without any particular evidence provided in support thereof. The Examiner counters that if the list of available software were to change, then it would, in fact, appear beneficial because it would allow the user to see what programs were actually available (see column 8, lines 6-32), and if there were no changes, then it would not need to be downloaded again.

B. Claim 5

Regarding dependent **Claim 5**, Appellant argues that “Slivka does not describe updating the configuration file and signing the updated configuration file **including a load table which defines the programs a network appliance is authorized to use**” (page 6, Appeal Brief, emphasis added). First, the Examiner notes that although the claim recites “generating, by said host, an updated configuration file”, there is no requirement in the claim that the updated configuration file also includes a load table as asserted above. In response to Appellant’s argument that the references fail to show certain features of the invention, it is noted that the features upon which Appellant relies

(i.e., the updated configuration file including the load table) are not explicitly recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant then further argues that the previous Office action "takes an inconsistent position in the rejection [of] claim 5" and alleges that the Office action asserted that the summary list and not the cabinet file corresponded to the updated configuration file (pages 6-7, Appeal Brief). However, the Office action did not make such an assertion. Rather, because the rejection partially relied upon the description of the summary as disclosure of the load table, which is included within the configuration file, then updating the summary would constitute an updating of the configuration file (since updating a part of the configuration file would constitute an update of the file as a whole). In particular, the Examiner submits that an update to the summary of available software, as described at the previously cited portion (Slivka, column 8, lines 27-33) would effectively alter the components that the user can authorize for download (column 5, lines 55-65; column 6, lines 39-49; and column 8, lines 6-32; further, especially note column 8, lines 43-56, where the user authorizes downloading of software components), which in turn corresponds to an update of which files are included in a newly generated cabinet file (corresponding to the claimed configuration file, see column 13, lines 37-60, where the cabinet is created from the directive file which lists the software authorized by the user for download). Therefore, the signature applied at the cited portion (column 16, lines 65-67) is also applied to the updated configuration file, in contrast to Appellant's

allegation (pages 6-7 of the present Appeal Brief, where Appellant states that, since it is the cabinet file and not the summary list that is signed, then Slivka does not disclose signing the updated configuration file, based on Appellant's prior allegation that the Office action asserted that the summary list was the updated configuration file, addressed above). Therefore, in light of the clarifications presented herein, the citations above have been updated and expanded.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Zachary A. Davis

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